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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re S.E., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

T.E.,

Defendant and Appellant.

E050727

(Super.Ct.No. RIJ112811)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, and Anna M. Deckert, Deputy County Counsel,
for Plaintiff and Respondent.

This is an appeal by T.E. (hereafter mother) from the trial court's order under Welfare and Institutions Code section 366.26 terminating her parental rights to S.E., her then 10-year-old daughter.¹ Mother contends she presented sufficient evidence to establish both the beneficial parental relationship and sibling relationship exceptions to parental rights termination set out in section 366.26, subdivisions (c)(1)(B)(i) and (c)(1)(B)(v), and therefore the trial court erred when it terminated her parental rights. We disagree, and therefore we will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The pertinent facts are not in dispute and reveal that Riverside County Department of Social Services, Child Protective Services ("CPS") filed a juvenile dependency petition on August 28, 2006, alleging that S.E. and her younger sister, M., who is not a party to this appeal, came within the jurisdiction of the court under section 300, subdivision (b) because mother had mental health issues and a substance abuse problem. CPS had removed both girls from mother's custody and placed them with their maternal grandmother.

According to the report prepared for the detention hearing, S.E.'s older sister, 11-year-old A., found a suicide note mother had written.² A. also said that mother had physically assaulted the maternal grandmother. According to A., mother drank every day

¹ All statutory references are to the Welfare and Institutions Code unless indicated otherwise.

² A. has a different father than S.E. and M. and was released to his custody at the start of the dependency proceeding.

and she shouted at the radio and television. Mother admitted to the social worker that she suffered from anxiety and had been prescribed Paxil. Mother also stated that people on the radio and television talked to her about her children. S.E. reported that mother drank alcohol and that S.E. was fearful when mother said “bad words” to the radio and television.

The trial court detained S.E. and her younger sister at the conclusion of a detention hearing on August 29, 2006. The trial court set the jurisdiction hearing for September 19, 2006.

In its report for the jurisdiction hearing, CPS reported among other things that S.E. had said mother had destroyed a smoke detector because she thought people could watch her through the device. S.E. also stated that as a result of mother’s alcohol consumption, S.E. had to take care of herself and her younger sister. CPS reported that mother, who was employed and maintained a suitable home for the children, denied the allegations of the petition.

At the conclusion of a contested combined jurisdiction and disposition hearing on October 30, 2006, the trial court sustained the petition, declared both S.E. and her younger sister to be dependents of the juvenile court, and ordered them to remain in their placement with maternal grandmother. The trial court ordered reunification services for mother.

In the report prepared for the six-month review hearing on April 30, 2007, CPS reported that S.E. remained in the care of maternal grandmother, who was willing to

continue to provide care, and also was willing to adopt S.E. and her sister or to serve as their legal guardian. Reunification with one of her parents was the concurrent plan of S.E., who indicated she was interested in living with her father. CPS reported that mother was living in the home of her brother and sister-in-law, had completed a parenting class, and was continuing to participate in anger management and random drug testing. Mother was also participating in supervised visits with S.E., although she had missed one visit. S.E. remained in the care of her maternal grandmother.

In its 12-month review hearing report, filed October 2, 2007, CPS reported that mother was working at Taco Bell 50 to 60 hours a week, and continued to live with her brother and sister-in-law. In June mother had reported that she was being stalked and harassed by people from a local radio station, Fox News, and the ABC television network. Mother was referred for psychiatric services, and had received a prescription for psychotropic medications. Mother did not agree with the diagnosis and initially decided not to take the medication. Then mother agreed to take one of the prescriptions, and to find her own psychiatrist rather than return to the doctor who had prescribed the medication. CPS reported that mother's thoughts were bizarre, paranoid, and psychotic; that she had minimal reality based communications; that she admitted she heard voices talk to her from the radio and television; and that mother required close psychiatric monitoring. Mother had stopped attending counseling sessions. Mother was visiting S.E., for a time without supervision, but after mother stopped taking her medication and stopped attending counseling, CPS required supervised visitation.

On October 30, 2007, the trial court conducted the 12-month review hearing. The court continued reunification services for mother, placed S.E. with her father and ordered family maintenance services for him. The trial court authorized additional visitation for mother and conjoint therapy for mother and the children.

In its 18-month status review report filed on March 24, 2008, CPS recommended that the dependency proceeding regarding S.E. be terminated. S.E. had been placed with her father on October 30, 2007, and had overnight visits with mother. S.E. was participating in therapy to address jealousy and anger management issues involving her younger sister, M. According to the report, mother had completed her case plan and was taking her medication. Although she denied she had mental health issues mother continued to report that she was being harassed by various people, including news reporters, people at her work, and people on the street.

The trial court set a contested 18-month review hearing for May 21, 2008. In an addendum report filed on May 16, 2008, CPS reported S.E. had become unhappy about living with her father, who was not participating regularly in family therapy due to his work schedule, and stated she would like to live with her maternal grandmother. CPS also reported that mother had missed three random drug tests. The trial court continued the review hearing to June 19, 2008. In an addendum report filed June 16, 2008, CPS reported that mother was participating in her case plan and therapy. Mother's therapist reported that mother was taking her medication and had control over her emotions. As a

result the therapist anticipated discharging mother. The trial court continued the review hearing from June 19 to July 15, 2008.

At the hearing on July 15, the trial court asked CPS to prepare an addendum report addressing the question of whether S.E. could be placed with mother, given mother's progress in therapy. The court continued the review hearing to September 15, 2008. CPS filed the addendum report on September 10, 2008, and recommended among other things that S.E. remain with her father but that the court authorize placement with mother in the event S.E. was removed from her father's custody. According to CPS, mother had stopped taking her psychotropic medication and as a result was unable to appropriately parent her children. Mother also had a physical altercation with the maternal grandmother. The trial court again continued the 18-month review hearing initially to September 16, and then to November 3, 2008.

Before the November 3 hearing, CPS reported that mother had lost her job and appeared to be experiencing mental health problems. S.E.'s father had not submitted to hair follicle drug tests as required under his family maintenance plan. S.E.'s attendance at school was poor and she was not completing homework assignments. The trial court continued the review hearing to December 4, 2008, but on November 5, CPS filed a section 387 petition to remove S.E. from placement with her father. CPS temporarily placed S.E. in foster care rather than with mother because mother was not complying with her mental health treatment plan.

By the December 4 hearing, mother had resumed taking her medications and had moved out of her brother's home. Mother wanted S.E. placed with her but because she had not had an adequate period of stability, CPS recommended S.E. remain in foster placement. The trial court again continued the review hearing.

In addendum reports filed on January 21 and February 27, 2009, CPS reported that mother had been living at a women's shelter but currently was homeless and unemployed. Mother had participated in both supervised and unsupervised visitation with S.E. However, mother did not appear to be taking her medications as evidenced by the fact that she reported hearing voices.

The trial court conducted the 18-month review hearing on the original petition and a jurisdiction hearing on the section 387 petition on March 4, 2009. The trial court sustained the section 387 petition, denied reunification services to S.E.'s father, and terminated mother's reunification services. The trial court found legal guardianship to be the appropriate permanent plan for S.E. The court set the selection and implementation hearing for June 2, 2009.

By the time of that hearing, CPS had placed S.E. with her maternal uncle and aunt, both of whom were willing to adopt S.E. or be her legal guardians. S.E. was visiting with mother twice a month. The trial court adopted legal guardianship as the permanent plan and appointed the maternal uncle and aunt as S.E.'s legal guardians.

CPS filed a status review report on November 16, 2009, prior to the scheduled November 30, 2009, review hearing. In that report CPS asked that S.E.'s permanent plan

be changed from legal guardianship to adoption by the maternal uncle and aunt. CPS reported that S.E. was in fourth grade, had perfect attendance, and was on the honor roll. She wanted to be adopted by her maternal aunt and uncle and understood that she would not be able to return to mother's custody. According to CPS, the prospective adoptive parents were interested in maintaining and facilitating contact between S.E., her siblings, and mother. The trial court set a new section 366.26 hearing and that hearing took place on April 15 and 16, 2010.

In the report for that hearing CPS stated that S.E. appeared to understand the concept of adoption. S.E. said she wanted to be adopted. At the hearing, S.E., who was then 10 years old, testified among other things that she sometimes considered her aunt, with whom she had lived since April 2009, to be her mother. S.E. liked living with her aunt and enjoyed visiting her mother but did not want to live with her. Despite her earlier statement to the social worker, at the hearing S.E. said she did "not really" know what adoption meant. When asked how she would feel if she did not get to see her mother again, S.E. responded, "Well, sad."

Mother testified at the hearing that she visits S.E. as often as possible, and since she has been placed with the maternal aunt, mother has visited every other week. Mother stated that she plays with the children when she visits, "we do activities together." S.E. calls mother "mom," hugs her when their visits start, and is very affectionate with mother. When asked what types of things mother and S.E. do together, mother again said, "We do activities together, or we go shopping. We usually play with her Brats [*sic*]

dolls and stuff like that.” When asked if her bond with S.E. is very strong, mother said, “Yes, I have a very strong bond. It’s not as strong as it used to be. But, when we were together every weekend it was real strong, and they would get sad. And to even now, they get sad when they have to leave me. And they are very excited when they are with me.” Mother added, “The more visitation they keep taking away, the more distant my kids are getting from me.”

At the conclusion of the hearing, the trial court made the required findings and terminated mother’s parental rights with respect to S.E.

Additional facts will be recounted below as pertinent to mother’s claims on appeal.

DISCUSSION

As noted previously, mother raises two claims of error in this appeal. We first address her claim the trial court erred in terminating her parental rights despite the uncontested evidence of their beneficial mother-daughter relationship.

1.

BENEFICIAL PARENTAL RELATIONSHIP

We review a trial court’s order terminating parental rights to determine whether it is supported by substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) Under section 366.26, subdivision (c)(1), the juvenile court must terminate parental rights if it finds by clear and convincing evidence that a child is adoptable unless it finds a compelling reason for determining that termination would be detrimental under one or

more of the exceptions set out in subdivision (c)(1)(B). Under section 366.26, subdivision (c)(1)(B)(i), “the court may forego adoption and refrain from terminating parental rights only if a parent has maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship. To trigger the application of the parental relationship exception, the parent must show the parent-child relationship is sufficiently strong that the child would suffer detriment from its termination.

[Citation.] The benefit to the child from continuing such a relationship must also be such that the relationship “‘promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.’” [Citations.] A child who is determined to be a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may benefit the child to some degree but does not meet the child’s need for a parent. [Citation.] Adoption, when possible, is the permanent plan preferred by the Legislature if it is likely the child will be adopted. [Citation.]” (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449-450.) “To overcome the strong policy in favor of terminating parental rights and to fall within section 366.26, subdivision (c)(1)[(B)(i)]’s purview, the parent must show more than ‘frequent and loving contact’ [citation], and be more to the child than a mere ‘friendly visitor or friendly nonparent relative.’ [Citation.] The parent must show the parent-child bond is a ‘substantial, positive emotional attachment such that the child would be greatly harmed’ if parental rights were terminated. [Citation.]” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

Mother's testimony, set out above, establishes that she maintained regular visitation and contact with S.E. The evidence also shows that S.E. enjoyed her visits with mother, they did fun things together, and mother brought her little gifts. S.E. testified that she loves mother, calls her "mom," but likes living with her aunt while also getting to see her mother. S.E. said she would be sad if she did not get to see her mother again and confirmed that she wants her mother to be in her life as her mom. S.E. also confirmed that she did not want to live with her mother and that she wanted to live with her aunt "forever," or at least while S.E. is young and going to school. Mother, as previously noted, testified that she had a very strong bond with S.E., although it was not as strong as it used to be since her visitation had been changed from every weekend to every other week; "[t]he more visitation they keep taking away, the more distant my kids are getting from me."

Mother's contrary claim notwithstanding, the above quoted evidence does not compel a finding that there is a beneficial relationship between S.E. and mother that outweighs the statutory preference in favor of adoption. The evidence shows that then 10-year-old S.E. loves her mother, enjoys playing and spending time with her, and would be sad if she were unable to see mother again. That evidence does not show a "substantial, positive emotional attachment such that the child would be greatly harmed" if parental rights were terminated. [Citation.]" (*In re Helen W.*, *supra*, 150 Cal.App.4th at p. 81.)

Mother relies on *In re Brandon C.* (1999) 71 Cal.App.4th 1530 (*Brandon C.*) in which the trial court found the beneficial parental relationship exception to termination of parental rights applied and the appellate court affirmed. In *Brandon C.*, twin boys were placed with their paternal grandmother and the mother visited as often as permitted by the visitation order. Both the grandmother and the mother testified that the twins shared a close bond with their mother. The grandmother also testified that the twins looked forward to their mother's visits, had a good relationship with her, and that it would not be in their best interests to terminate that relationship. (*Id.* at p. 1533.)

Brandon C. involves an appeal by the social services agency from the juvenile court's refusal to terminate parental rights. The Court of Appeal therefore was required to view the evidence in the light most favorable to the mother. The situation here is the reverse, and we must view the evidence most favorably to the trial court's finding that section 366.26, subdivision (c)(1)(B)(i) does not apply.

Application of the cited legal principles to the facts in this case requires us to find that substantial evidence supports the trial court's finding that the beneficial parental relationship exception does not apply.

2.

SIBLING RELATIONSHIP

Mother's second claim is that the exception to parental rights termination based on a beneficial sibling relationship applies in this case. That exception is set out in section 366.26, subdivision (c)(1)(B)(v), which states that parental rights need not be terminated

when, “There would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” As the parent asserting that the sibling relationship exception applies, mother had the burden of proof on this issue. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)³ As with the previous issue, we review the trial court’s finding that the sibling relationship exception does not apply for substantial evidence. (*Ibid.*)

The only evidence mother cites to support her claim that the sibling relationship exception applies is that S.E. and her younger sibling, M., lived together before the dependency was initiated, they are “close in age,” and they have visited and played with each other weekly since being removed from mother’s care. There is no evidence, however, that the two have any familial bond with each other, or that they shared common experiences. Instead, the evidence shows that S.E. mistreated M., and as a result M. was afraid of S.E. In fact, CPS recommended at one point that visits between the two girls be supervised. Mother’s contrary claim notwithstanding, S.E. does not have

³ Mother has standing to raise the exception because under general standing requirements, she is a party directly aggrieved by a decision concerning whether that exception applies since it directly impacts the parent’s interest in reunification. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 948-950; *In re Erik P.* (2002) 104 Cal.App.4th 395, 402.)

a close family relationship with M. Therefore, termination of mother's parental rights will not adversely affect that relationship.

In short, we conclude the trial court's finding that the sibling relationship exception does not apply in this case is supported by substantial evidence.

DISPOSITION

The order terminating mother's parental rights to S.E. is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Ramirez
P.J.

/s/ Hollenhorst
J.